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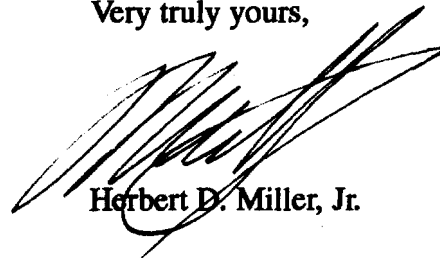
William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, D. C. 20554

Dear Mr. Caton:

Transmitted herewith, on behalf of Telephone and Data Systems, Inc. and United States Cellular Corporation, is their Opposition to a Motion for Leave to Intervene in CC Docket Number 94-11 filed by GTE Mobilnet.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,



Herbert D. Miller, Jr.

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BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D. C. 20554

IN RE APPLICATION OF

TELEPHONE AND DATA SYSTEMS, INC.

For facilities in the Domestic Public  
Cellular Telecommunications Service  
on Frequency Block B in Market 715,  
Wisconsin 8 (Vernon) Rural Service  
Area

CC Docket Number  
94-11

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

TO: Honorable Joseph P. Gonzalez  
Administrative Law Judge

**OPPOSITION TO MOTION FOR LEAVE TO INTERVENE**

Telephone and Data Systems, Inc. (TDS) and United States Cellular Corporation (USCC) file herewith, by their attorneys, their Opposition to the motion of GTE Mobilnet (GTE) for leave to intervene in this proceeding.

**I. GTE is Not in the Class of Entities Mentioned in the *HDO* as Potential Interveners.**

The *HDO* recognizes that

"various other parties have raised footnote three issues against either USCC or TDS in other proceedings. Any of those other parties which have pending petitions alleging these character issues may file a petition to intervene in this proceeding pursuant to Section 1.223 of the Commission's Rules." (*HDO*, ¶ 38).

GTE has not raised any footnote three issue against USCC or TDS in this, or in any other proceeding, and does not claim that it has. GTE is, therefore, not in the class of entities "invited" by the *HDO* to file a petition to intervene here.

**II. GTE Does Not Have Standing To Intervene in This Proceeding Because it Is No Longer An Eligible Applicant In Wisconsin RSA #8**

In its Petition to Intervene, GTE claims the right to intervene in this proceeding based on its status "as a mutually exclusive applicant for the [sic]

Wisconsin 8." However, GTE is no longer an eligible applicant for the Wisconsin RSA No. 8 wireline authorization.

Section 22.921(b)(1) of the FCC's Rules provides, in pertinent part, that:

"No party to a wireline application shall have an ownership interest, direct or indirect, in more than one application for the same Rural Service Area...."

GTE was a wireline applicant in Wisconsin RSA No. #8 (Fee No. 9866673), as was Contel of Illinois, Inc. (Fee No. 9862166). In 1990, GTE's parent company sought and in 1991 received, FCC consent to acquire Contel Corporation ("Contel"), Contel of Illinois' parent company, and subsequently did so, bringing all GTE and Contel subsidiaries under common control.<sup>1</sup>

In connection with their merger, GTE and Contel sought and received an exemption from Section 22.23(g)(3) of the FCC's Rules, to allow GTE to assume control of Contel's pending applications, and GTE agreed to divest its interest in the wireline licensees in two MSA markets where Contel controlled the non-wireline licensee. See 5 FCC Rcd 6357, 6 FCC Rcd 1006. However, GTE and Contel neither sought nor received FCC consent to any waiver of Section 22.921(b)(1). Thus, GTE is now in control of two applications in Wisconsin RSA No. 8 in contravention of that rule. Accordingly, both GTE's and Contel's applications in Wisconsin RSA No. 8 are now ineligible for further consideration. In 1990, GTE and Contel could presumably have requested the right to make an election between their applications in markets where GTE and Contel had competing applications in order to allow one of them to remain on file. See *Portland Cellular Partnership*, 6 FCC Rcd 2050, 2052 (1989). They did not do so. Accordingly, both of their

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<sup>1</sup> See *Public Notice*, "GTE Corporation Seeks FCC Consent To Acquire Contel Corporation-Pleading Cycle Established," 5 FCC Rcd 6354 (1990); *Contel Corporation*, 6 FCC Rcd 1003 (1991).

Wisconsin RSA No. 8 applications are now ineligible and will obviously be dismissed at the appropriate time.<sup>2</sup>

A central policy underlying Section 22.921(b)(1), particularly applicable in the wireline context, is that for one entity to control more than one RSA application in a given market may create an unfair "skewing" of the selection process as a result of "abusive multiple application strategies." See, e.g., *Cellular Radio Service (Lottery Selection)*, 58 R.R. 2d 677,692 (1985). Here, GTE is attempting just such a strategy by seeking to participate in this hearing through its control of Contel, which is already a party as a Wisconsin RSA No. 8 petitioner, as well as through an independent intervention in its own right. It is difficult to imagine a clearer violation of the letter and spirit of Section 22.921(b)(1).

The FCC has consistently and strictly enforced the Section 22.921(b)(1) prohibition against cross-interests among competing applicants, even where controlling interests have not been involved. Here, where the same entity has a controlling interest in both applicants, the policy should apply *a fortiori*.<sup>3</sup>

Since GTE's application is patently defective by virtue of the Section 22.921(b)(1) violation, GTE's alleged "opportunity to become the successful

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<sup>2</sup> Since there is no basis under the rules for allowing these applications to be entertained, since no waiver of Section 22.921(b)(1) has ever been granted to permit two applications under common ownership to be prosecuted for the same market, and no waiver has even been requested (and if now requested would be grossly out of time), we submit that it is self-evident that GTE has no chance of having its application granted, and therefore it is immaterial that the application has not yet been dismissed.

<sup>3</sup> See *Progressive Cellular III* 3-3, 6 FCC Rcd 596 (M.S.D. 1991); *Florida Cellular Mobile Communication Corporation*, 6 FCC Rcd 354 (M.S.D. 1991); *MV Cellular, Inc.*, 103 FCC 2d 414, 418-20 (1986); *Portland Cellular Partnership*, 2 FCC Rcd 5586, 5587 (M.S.D. 1987), aff'd 4 FCC Rcd 2050 (1989); *Henry County Telephone Company, et.al.*, Mimeo No. 2748 (C.C. Bur., released February 21, 1986).

applicant" here (GTE Petition, p. 1) simply does not exist, and there is no way that GTE could be harmed or advantaged by any conceivable outcome of this proceeding. Accordingly, GTE is not a party in interest and it therefore lacks standing to participate in this hearing under Section 1.223(a) of the Rules, see *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470 (1940); *Straus Communications, Inc. v. FCC*, 530 F.2d 1001 (D.C. Cir. 1976).

**III. GTE Has Not Even Attempted to Show How its Participation Could Assist the Commission in Resolving the Designated Issues.**

Despite the express requirement of Section 1.223(b) of the Rules that a party seeking intervention show "how such petitioner's participation will assist the Commission in the determination of the issues in question. . ." GTE has not even claimed to be in a position to provide such assistance. Its petition is silent on the subject, and there is no conceivable way in which GTE could do so.

**Conclusion**

GTE lacks standing in this proceeding, and its intervention petition fails to show any reason why it should be permitted to intervene. Its petition should, therefore, be denied, and its prematurely filed notice of appearance should be dismissed.

Respectfully submitted,  
TELEPHONE AND DATA SYSTEMS, INC.  
UNITED STATES CELLULAR CORPORATION

By

/s/

  
Alan Y. Naftalin  
Alan Y. Naftalin

/s/

R. Clark Wadlow  
R. Clark Wadlow

By

/s/

  
Herbert D. Miller, Jr.  
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March 25, 1994

## Certificate of Service

I, Richard Massie, a secretary in the law firm of Koteen & Naftalin, hereby certify that I have this date sent copies of the foregoing to the following by First Class United States Mail, postage prepaid:

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/s/   
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March 25, 1994